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HOUSE BILL 803

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Max Coll

AN ACT

RELATING TO TELECOMMUNICATIONS; REGULATING TELEPHONE SOLICITATION ACTIVITIES; ENACTING THE CONSUMER NO-CALL ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 7 of this act may be cited as the "Consumer No-Call Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the Consumer No-Call Act:

A. "caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls;

B. "established business relationship" means a relationship that:

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1 (1) was formed, prior to a telephone
2 solicitation, through a voluntary, two-way communication
3 between a seller or telephone solicitor and a residential
4 subscriber, with or without consideration, on the basis of an
5 application, purchase, ongoing contractual agreement or
6 commercial transaction between the parties regarding products
7 or services offered by the seller or telephone solicitor;

8 (2) has not been previously terminated by
9 either party; and

10 (3) currently exists or has existed within the
11 immediately preceding six months;

12 C. "local exchange area" means a geographic area
13 encompassing one or more local communities, as described in
14 maps, tariffs or rate schedules filed with the public
15 regulation commission, where local exchange rates apply;

16 D. "local exchange company" means a
17 telecommunications company that provides the transmission of
18 two-way interactive switched voice communications within a
19 local exchange area;

20 E. "public telecommunications service" means the
21 transmission of signs, signals, writings, images, sounds,
22 messages, data or other information of any nature by wire,
23 radio, lightwaves or other electromagnetic means originating
24 and terminating in this state regardless of actual call
25 routing, but "public telecommunications service" does not

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1 include the provision of terminal equipment used to originate
2 or terminate the service; private telecommunications service;
3 broadcast transmissions by radio, television and satellite
4 broadcast stations regulated by the federal communications
5 commission; radio common carrier services, including mobile
6 telephone service and radio paging; or one-way cable television
7 service;

8 F. "residential subscriber" means a person who has
9 subscribed to residential telephone service from a local
10 exchange company or the other persons living or residing with
11 such person;

12 G. "telecommunications company" means a person that
13 provides public telecommunications service; and

14 H. "telephone solicitation" means a voice or
15 telefacsimile communication over a telephone line for the
16 purpose of encouraging the purchase or rental of, or investment
17 in, property, goods or services and includes a communication
18 described in this subsection through the use of automatic
19 dialing and recorded message equipment or by other means, but
20 "telephone solicitation" does not include a communication:

21 (1) to a residential subscriber with that
22 subscriber's prior express invitation or permission;

23 (2) by or on behalf of a person with whom a
24 residential subscriber has an established business
25 relationship;

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1 (3) by an unpaid volunteer for or unpaid
2 member of an organization if the organization has been granted
3 an exemption from the federal income tax by the United States
4 commissioner of internal revenue as an organization described
5 in Section 501(c)(3) of the Internal Revenue Code of 1986;

6 (4) made for the sole purpose of urging
7 support for or opposition to a political candidate or ballot
8 issue; or

9 (5) made for the sole purpose of conducting
10 political polls or soliciting the expression of opinions, ideas
11 or votes.

12 Section 3. [NEW MATERIAL] DO-NOT-CALL REGISTRY-- FEDERAL
13 TRADE COMMISSION REGISTRY ADOPTED AS STATE REGISTRY. -- The
14 national "do-not-call" registry established and maintained by
15 the federal trade commission pursuant to 16 CFR Section
16 310.4(b)(1)(iii)(B) is adopted and shall serve as the New
17 Mexico do-not-call registry for the purposes of the Consumer
18 No-Call Act.

19 Section 4. [NEW MATERIAL] PROHIBITED ACT-- CIVIL ACTION--
20 CRIMINAL PENALTY. --

21 A. A person engaging in telephone solicitation
22 shall not initiate an outbound telephone call consisting of
23 telephone solicitation to a residential subscriber in New
24 Mexico when that residential subscriber's telephone number has
25 been on the national "do-not-call" registry, established by the

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1 federal trade commission, for at least three months prior to
2 the date the call is made.

3 B. A residential subscriber may bring a civil
4 action against a person who violates the provisions of
5 Subsection A of this section in respect to that subscriber. A
6 residential subscriber who succeeds in obtaining a judgment of
7 violation shall be awarded liquidated damages in the amount of
8 five hundred dollars (\$500) for each violation proved. Each
9 call is a separate violation of the provisions of this section.
10 A residential subscriber that succeeds in obtaining a judgment
11 of violation shall be awarded reasonable attorney fees and
12 costs by the court.

13 C. Violation of the provisions of Subsection A of
14 this section is a misdemeanor, and the violator shall be
15 sentenced pursuant to Section 31-19-1 NMSA 1978.

16 Section 5. [NEW MATERIAL] ATTORNEY GENERAL TO PROMULGATE
17 RULES TO IMPLEMENT TELEPHONE SOLICITATION RESTRICTIONS. -- No
18 later than January 1, 2004, the attorney general shall
19 promulgate rules that specify:

20 A. the methods by which a residential subscriber
21 may give notice to the attorney general of his objection to
22 receiving telephone solicitations or revocation of a notice
23 previously given;

24 B. the length of time for which a notice of
25 objection shall be effective and the effect of a change of

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1 telephone number on the notice;

2 C. the methods by which objections and revocations
3 shall be collected and added to the New Mexico do-not-call
4 registry;

5 D. the methods by which a person desiring to engage
6 in telephone solicitation may obtain access to the New Mexico
7 do-not-call registry to avoid calling the telephone numbers of
8 residential subscribers in New Mexico; and

9 E. methods for keeping the New Mexico do-not-call
10 registry current and other matters relating to the registry
11 that the attorney general deems desirable.

12 Section 6. [NEW MATERIAL] RESTRICTIONS ON USE OF
13 REGISTRY.--Information contained in the registry established
14 pursuant to the Consumer No-Call Act shall be used only for the
15 purpose of compliance with that act. The information is
16 confidential and is not subject to public inspection or
17 disclosure.

18 Section 7. [NEW MATERIAL] BLOCKING PROHIBITED.--A person
19 engaging in telephone solicitation shall not use a method to
20 block or otherwise circumvent a residential subscriber's use of
21 a caller identification service.

22 Section 8. Section 57-12-1 NMSA 1978 (being Laws 1967,
23 Chapter 268, Section 1) is amended to read:

24 "57-12-1. SHORT TITLE.--~~[This act]~~ Chapter 57, Article 12
25 NMSA 1978 may be cited as the "Unfair Practices Act". "

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1 Section 9. Section 57-12-22 NMSA 1978 (being Laws 1989,
2 Chapter 309, Section 2) is amended to read:

3 "57-12-22. TELEPHONE SOLICITATION SALES--AUTOMATED
4 TELEPHONE DIALING SYSTEMS FOR SALES RESTRICTED--DISCLOSURE AND
5 OTHER REQUIREMENTS ESTABLISHED FOR AUTHORIZED TELEPHONE
6 SOLICITATION SALES--PROHIBITED TELEPHONE SOLICITATION. --

7 A. It is unlawful for a person [~~shall not~~] to
8 utilize an automated telephone dialing or push-button or tone-
9 activated address signaling system with a prerecorded message
10 to solicit persons to purchase goods or services unless there
11 is an existing business relationship between [~~such~~] the persons
12 and the person being called consents to hear the prerecorded
13 message.

14 B. It is unlawful [~~under the Unfair Practices Act~~]
15 for [~~any~~] a person to solicit by means of a seller-initiated
16 telephone sale of goods or services:

17 (1) without [~~promptly~~] disclosing within
18 fifteen seconds of the time the person being called answers,
19 the name of the sponsor and the primary purpose [~~or purposes~~]
20 of the contact;

21 (2) misrepresenting the primary purpose of a
22 telemarketing call as a "courtesy call", "public service
23 informational call" or some other euphemism;

24 [~~(2)~~] (3) in which offers or solicitations in
25 the guise of research or a survey are made when the real intent

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1 is to sell goods or services;

2 [~~(3)~~] (4) without disclosing, prior to
3 [commitments by customers] a commitment being made by the
4 person called, the cost of the goods or services, all terms,
5 conditions, payment plans and the amount or existence of any
6 extra charges such as shipping and handling;

7 [~~(4) which~~] (5) that are received before 9:00
8 a.m. or after [~~9:00~~] 6:00 p. m. ;

9 [~~(5)~~] (6) using automatic dialing equipment
10 unless the telephone immediately releases the line when the
11 called party disconnects; and

12 [~~(6)~~] (7) asking for credit card numbers until
13 and unless the customer has committed to make the purchase and
14 expressed a desire to use a credit card to pay for the
15 purchase.

16 C. It is unlawful for a person to:

17 (1) make a seller-initiated telephone sale of
18 goods or services to a residential subscriber who has given
19 notice to the attorney general of the subscriber's objection to
20 receiving telephone solicitations pursuant to the Consumer No-
21 Call Act; or

22 (2) use a method to block or otherwise
23 circumvent a residential subscriber's use of a caller
24 identification service pursuant to the Consumer No-Call Act."

25 Section 10. CONTINGENT REPEAL. --Sections 1 through 7 of

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1 this act are repealed on the date that a federal do-not-call
2 rule adopted by the federal communications commission is
3 effective.

4 Section 11. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2003.

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